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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2020-0021]

RIN 3170-AA98

Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer’s ability to repay any residential mortgage loan, and loans that meet Regulation Z’s requirements for “qualified mortgages” (QMs) obtain certain protections from liability. One category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, government-sponsored enterprises, or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The GSEs are currently under Federal conservatorship. The Bureau of Consumer Financial Protection (Bureau) established this category of QMs (Temporary GSE QM loans) as a temporary measure that is set to expire no later than January 10, 2021 (the sunset date) or when the GSEs exit conservatorship. Another category of QMs is the General QM loan category. In a separate proposal released simultaneously with this proposal, the Bureau proposes amendments to the General QM loan definition. In this notice of proposed rulemaking, the Bureau proposes to amend Regulation Z to replace the sunset date of the Temporary GSE

QM loan definition with a provision that extends the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition. The Bureau is not proposing to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship. The Bureau is proposing to extend the Temporary GSE QM loan definition to ensure that responsible, affordable mortgage credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before the amendments to the General QM loan definition take effect.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2020-0021 or RIN 3170-AA98, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2020-NPRM-ATRQM-SunsetDate@cfpb.gov. Include Docket No. CFPB-2020-0021 or RIN 3170-AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake – QM Extension of Sunset Date, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries

during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202-435-9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Benjamin Cady, Counsel; or David Friend or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule or Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the Rule's requirements for QMs obtain certain protections from liability. The Rule defines several categories of QMs.

One QM category defined in the Rule is the General QM loan category. General QM loans must comply with the Rule's prohibitions on certain loan features, its points-and-fees

limits, and its underwriting requirements. For General QM loans, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent. Creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in appendix Q of Regulation Z.

A second, temporary category of QM loans defined in the Rule consists of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac while under the conservatorship of the FHFA. This proposal refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. Unlike for General QM loans, the Rule does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the consumer's DTI ratio exceeds 43 percent, so long as the loan is eligible to be purchased or guaranteed by either of the GSEs. In addition, for Temporary GSE QM loans, the Rule does not require creditors to use appendix Q to determine the consumer's income, debt, or DTI ratio.

Under the Rule, the Temporary GSE QM loan definition expires with respect to each GSE when that GSEs exits conservatorship or on January 10, 2021, whichever comes first. The GSEs are currently in conservatorship. Despite the Bureau's expectations when the Rule was published in 2013, Temporary GSE QM loan originations continue to represent a large and persistent share of the residential mortgage loan market, and a significant number of Temporary GSE QM loans would not qualify as General QM loans under the current regulations after the Temporary GSE QM loan definition expires. These loans would not qualify as General QM loans either because the consumer's DTI ratio is above 43 percent or because the creditor's method of documenting and verifying income or debt is incompatible with appendix Q.

Although alternative loan options, including some other types of QM loans, would still be available to many consumers who could not qualify for General QM loans, the Bureau anticipates that many loans that are currently Temporary GSE QM loans would cost materially more for consumers and many would not be made at all.

In a separate proposal issued simultaneously with this proposal, the Bureau is proposing, among other things, to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. The Bureau expects that such amendments would allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires, thereby helping to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau tentatively concludes that having the Temporary GSE QM loan definition expire when a final rule amending the General QM loan definition becomes effective will ensure that responsible, affordable mortgage credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before the amendments to the General QM loan definition take effect.

In light of these and other considerations, the Bureau proposes to extend the Temporary GSE QM loan definition to the effective date of a final rule issued by the Bureau amending the General QM loan definition. The Bureau does not intend for this effective date to be prior to April 1, 2021. Thus, the Bureau does not intend for the Temporary GSE QM loan definition to expire prior to April 1, 2021. The Bureau is not proposing to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.¹ The amendments were intended “to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.”² As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.³

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer’s ability to repay. These factors are the consumer’s credit history, current and expected income, current obligations, debt-to-income ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.⁴ A creditor, however, may not be certain whether its ability-to-repay

¹ Pub. L. 111-203, 1411-12, 1414, 124 Stat. 1376 (2010); 15 U.S.C. 1639c.

² 15 U.S.C. 1639b(a)(2).

³ 15 U.S.C. 1639c(a)(1). TILA section 103 defines “residential mortgage loan” to mean, with some exceptions including open-end credit plans, “any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.” 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.*, 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

⁴ 15 U.S.C. 1639c(a)(3).

determination is reasonable in a particular case, and it risks liability if a court or an agency, including the Bureau, later concludes that the ability-to-repay determination was not reasonable.

TILA addresses this uncertainty by defining a category of loans—called QMs—for which a creditor “may presume that the loan has met” the ATR requirements.⁵ The statute generally defines a QM to mean any residential mortgage loan for which:

- There is no negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.⁶

B. The Ability-to-Repay/Qualified Mortgage Rule

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA’s ATR requirements (January 2013 Final Rule).⁷ The January 2013 Final Rule became

⁵ 15 U.S.C. 1639c(b)(1).

⁶ 15 U.S.C. 1639c(b)(2)(A).

⁷ 78 FR 6408 (Jan. 30, 2013).

effective on January 10, 2014, and the Bureau amended it several times through 2016.⁸ This proposal refers to the January 2013 Final Rule and later amendments to it collectively as the Ability-to-Repay/Qualified Mortgage Rule, the ATR/QM Rule, or the Rule. The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.⁹ Under the Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is “higher priced.”¹⁰

1. General QM Loans

One category of QM loans defined by the Rule consists of “General QM loans.” A loan is a General QM loan if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits;¹¹
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years;¹²

⁸ See 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016).

⁹ 12 CFR 1026.43(c), (e).

¹⁰ The Rule generally defines a “higher priced” covered transaction to mean a first-lien mortgage with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points; or a subordinate-lien transaction with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by 3.5 or more percentage points. 12 CFR 1026.43(b)(4). A creditor that makes a QM loan that is not “higher priced” is entitled to a conclusive presumption that it has complied with the Rule—*i.e.*, the creditor receives a safe harbor. 12 CFR 1026.43(e)(1)(i). A creditor that makes a QM loan that is “higher priced” is entitled to a rebuttable presumption that it has complied with the Rule. 12 CFR 1026.43(e)(1)(ii).

¹¹ 12 CFR 1026.43(e)(2)(i)-(iii).

¹² 12 CFR 1026.43(e)(2)(iv).

- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q;¹³ and
- The consumer's DTI ratio is no more than 43 percent (DTI limit), determined in accordance with appendix Q.¹⁴

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. The standards in appendix Q were adapted from guidelines maintained by the Federal Housing Administration (FHA), of the U.S. Department of Housing and Urban Development (HUD) when the January 2013 Final Rule was issued.¹⁵ Appendix Q addresses how to determine a consumer's employment-related income (*e.g.*, income from wages, commissions, and retirement plans); non-employment related income (*e.g.*, income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.¹⁶

2. *Temporary GSE QM Loans*

A second, temporary category of QM loans defined by the Rule, Temporary GSE QM loans, consists of mortgages that (1) comply with the Rule's prohibitions on certain loan features, its underwriting requirements, and its limitations on points and fees;¹⁷ and (2) are eligible to be

¹³ 12 CFR 1026.43(e)(v).

¹⁴ 12 CFR 1026.43(e)(2)(vi).

¹⁵ 78 FR 6408, 6527-28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

¹⁶ 12 CFR 1026, appendix Q.

¹⁷ 12 CFR 1026.43(e)(2)(i)-(iii).

purchased or guaranteed by either GSE while under the conservatorship of the FHFA.¹⁸ Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the applicable GSE's DTI requirements and other underwriting criteria. In addition, income and debt for such loans, and DTI ratios, generally are verified and calculated using GSE standards, rather than appendix Q. The Temporary GSE QM loan category—also known as the GSE Patch—is scheduled to expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.¹⁹

C. The Bureau's Assessment of the Ability-to-Repay/Qualified Mortgage Rule

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.²⁰ The Bureau noted in the January 2013 Final Rule that its section 1022(d) assessment of the ATR/QM Rule would provide an opportunity to analyze the Temporary GSE QM loan definition and confirm, prior to its expiration, whether it would be appropriate to allow it to expire.²¹ The Bureau published its report as a result of its assessment on January 11, 2019 (Assessment Report).²²

¹⁸ 12 CFR 1026.43(e)(4).

¹⁹ 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by HUD (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B)-(E). This temporary category of QM loans no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.*, 24 CFR 203.19 (HUD rule). Other categories of QM loans provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before April 1, 2016).

²⁰ 12 U.S.C. 5512(d).

²¹ 78 FR 6408, 6533-34 (Jan. 30, 2013).

D. Effects of the COVID-19 Pandemic on Mortgage Markets

The COVID-19 pandemic has had a significant effect on the U.S. economy. Economic activity has contracted, many businesses have partially or completely closed, and millions of workers have become unemployed. The pandemic has also affected mortgage markets. Among other things, it has resulted in a contraction of mortgage credit availability for many consumers, including those that would be dependent on the non-QM market for financing. The pandemic's impact on both the secondary market for new originations and on the servicing of existing mortgages has contributed to this contraction. These effects, and other effects of the pandemic, are discussed in greater detail in the separate proposal the Bureau is releasing simultaneously with this proposal.²³

III. The Rulemaking Process

The Bureau has solicited and received substantial public and stakeholder input on issues related to the substance of this proposed rule. In addition to the Bureau's discussions with and communications from industry stakeholders, consumer advocates, other Federal agencies²⁴, and members of Congress, the Bureau issued requests for information (RFIs) in 2017 and 2018 and in July 2019 issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The input from these RFIs and from the ANPR is briefly summarized below.

²² Bureau of Consumer Fin. Prot., *Ability-to-Repay and Qualified Mortgage Rule Assessment Report* (Jan. 2019), 2019) (Assessment Report), https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

²³ See Bureau of Consumer Fin. Prot., "Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition," part II.D.

²⁴ The Bureau has consulted with agencies including the FHFA, the Board of Governors of the Federal Reserve System (Board), FHA, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Trade Commission, the National Credit Union Administration, and the Department of the Treasury.

A. The Requests for Information

In June 2017, the Bureau published a request for information in connection with the Assessment Report (Assessment RFI).²⁵ In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.²⁶ The comments addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit; perceived problems with, and potential changes and alternatives to, appendix Q; and how the Bureau should address the expiration of the Temporary GSE QM loan definition. The comments expressed a range of ideas for addressing the expiration of the Temporary GSE QM loan definition, from making the definition permanent, to applying the definition to other mortgage products, to extending it for various periods of time, or some combination of those suggestions. Other comments stated that the Temporary GSE QM loan definition should be eliminated or permitted to expire.

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial education activities.²⁷ As part of the call for evidence, the Bureau published requests for information relating to, among other things, the Bureau's rulemaking process,²⁸ the Bureau's adopted regulations and new rulemaking authorities,²⁹ and the Bureau's inherited regulations

²⁵ 82 FR 25246 (June 1, 2017).

²⁶ See Assessment Report, *supra* note 22, at appendix B (summarizing comments received in response to the Assessment RFI).

²⁷ See Bureau of Consumer Fin. Prot., *Call for Evidence*, <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence> (last updated June 12, 2020).

²⁸ 83 FR 10437 (Mar. 9, 2018).

²⁹ 83 FR 12286 (Mar. 21, 2018).

and inherited rulemaking authorities.³⁰ In response to the call for evidence, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. The comments addressed a variety of topics, including the General QM loan definition, appendix Q, and the Temporary GSE QM loan definition. The comments also raised concerns about, among other things, the risks of allowing the Temporary GSE QM loan definition to expire without any changes to the General QM loan definition or appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI, discussed above.

B. The Advance Notice of Proposed Rulemaking

On July 25, 2019, the Bureau issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition, including whether and how the Bureau should revise the DTI limit in the General QM loan definition; whether the Bureau should supplement or replace the DTI limit with another method for directly measuring a consumer's personal finances; whether the Bureau should revise appendix Q or replace it with other standards for calculating and verifying a consumer's debt and income; and whether, instead of a DTI

³⁰ 83 FR 12881 (Mar. 26, 2018).

limit, the Bureau should adopt standards that do not directly measure a consumer's personal finances.³¹ The Bureau requested comment on how much time industry would need to change its practices in response to any changes the Bureau makes to the General QM loan definition.³² The Bureau received 85 comments on the ANPR from businesses in the mortgage industry (including creditors), consumer advocacy groups, elected officials, individuals, and research centers.

IV. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term “consumer financial protection function” to include “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”³³ Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.³⁴

Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements,

³¹ 84 FR 37155, 37155, 37160-62 (July 31, 2019).

³² *Id.* at 37162. The Bureau stated that if the answer to this question depends on how the Bureau revises the definition, the Bureau requested answers based on alternative possible definitions.

³³ 12 U.S.C. 5581(a)(1)(A).

³⁴ Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include the “enumerated consumer laws” and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining “enumerated consumer laws” to include TILA).

classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.³⁵ A purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”³⁶ Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.³⁷ As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

Section 129C(b)(3)(B)(i) of TILA authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.³⁸ In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes

³⁵ 15 U.S.C. 1604(a).

³⁶ 15 U.S.C. 1601(a).

³⁷ 15 U.S.C. 1639b(a)(2).

³⁸ 15 U.S.C. 1639c(b)(3)(B)(i).

of section 129C.³⁹ As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.⁴⁰ TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

V. Why the Bureau Is Issuing this Proposal

The Bureau proposes to revise the ATR/QM Rule to provide that the Temporary GSE QM loan definition would expire on the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first.⁴¹ The Bureau is proposing those amendments to the General QM loan definition in a separate proposal issued simultaneously with this proposal. In that notice of proposed rulemaking, the Bureau is proposing to remove the General QM loan definition's 43 percent DTI limit and replace it with a price-based threshold.

Under that proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds the average prime offer rate (APOR) for a comparable

³⁹ 15 U.S.C. 1639c(b)(3)(A).

⁴⁰ 12 U.S.C. 5512(b)(1).

⁴¹ The Bureau is also proposing to make confirming changes to the commentary. The Bureau is not proposing changes to the language in § 1026.43(e)(4)(ii)(A)(1) providing that the Temporary GSE QM loan definition will expire when the GSEs cease to operate under conservatorship of the FHFA.

transaction by less than two percentage points as of the date the interest rate is set.⁴² The proposal would retain the existing product-feature and underwriting requirements and limits on points and fees. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider the consumer's income or assets, debt, and DTI ratio or residual income and verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. The proposal would remove appendix Q, but would include clarifications of the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support, to help prevent compliance uncertainty that could otherwise result from the removal of appendix Q. The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions). Although the Bureau is proposing to remove the 43 percent DTI limit and adopt a price-based approach for the General QM loan definition, the Bureau is also requesting comment on two alternative approaches: (1) retaining the DTI limit and increasing it to a specific threshold between 45 percent and 48 percent or (2) using a hybrid approach involving both pricing and a DTI limit, such as applying a DTI limit to loans that are above specified rate spreads. Under these alternative approaches, creditors would not be required to count or verify the DTI ratio using appendix Q.

⁴² That proposal would also provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions.

The Bureau expects that the proposed amendments would, among other things, allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires. The Bureau tentatively determines that the proposed extension would ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments to the General QM loan definition take effect. In the Bureau's preliminary view, it is likely that many consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the amended General QM loan definition, as separately proposed by the Bureau—would not be able to obtain loans at all if the Temporary GSE QM loan definition expires and final amendments to the General QM loan definition have not gone into effect. Further, for loans absorbed by FHA and the private market in the absence of the Temporary GSE QM loan definition, there is significant risk that some consumers would pay more for these loans, although any pricing effects would depend on the characteristics of the particular loans that would be originated as FHA loans or in the private market. To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM loan definition take effect, the Bureau proposes to revise the ATR/QM Rule to provide that the Temporary GSE QM loan definition would expire on the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first.

A. Why the Bureau Created the Temporary GSE QM Loan Definition

In the January 2013 Final Rule, the Bureau explained why it created the Temporary GSE QM loan category. The Bureau observed that it did not believe that a 43 percent DTI ratio

“represents the outer boundary of responsible lending” and acknowledged that historically, and even after the financial crisis, over 20 percent of mortgages exceeded that threshold.⁴³ The Bureau believed, however, that, as DTI ratios increase, “the general ability-to-repay procedures, rather than the qualified mortgage framework, is better suited for consideration of all relevant factors that go to a consumer’s ability to repay a mortgage loan” and that “[o]ver the long term . . . there will be a robust and sizable market for prudent loans beyond the 43 percent threshold even without the benefit of the presumption of compliance that applies to qualified mortgages.”⁴⁴

At the same time, the Bureau noted that the mortgage market was especially fragile following the financial crisis, and GSE-eligible loans and federally insured or guaranteed loans made up a significant majority of the market.⁴⁵ The Bureau believed that it was appropriate to consider for a period of time that GSE-eligible loans were originated with an appropriate assessment of the consumer’s ability to repay and therefore warranted being treated as QMs.⁴⁶ The Bureau believed in 2013 that this temporary category of QM loans would, in the near term, help to ensure access to responsible, affordable credit for consumers with DTI ratios above 43 percent, as well as facilitate compliance by creditors by promoting the use of widely recognized, federally related underwriting standards.⁴⁷

The January 2013 Final Rule established a sunset date for the Temporary GSE QM loan definition of January 10, 2021 (seven years after that rule’s effective date), or when the GSEs

⁴³ 78 FR 6408, 6527 (Jan. 30, 2013).

⁴⁴ *Id.* at 6527-28.

⁴⁵ *Id.* at 6533-34.

⁴⁶ *Id.* at 6534.

⁴⁷ *Id.* at 6533.

exit conservatorship, whichever comes first.⁴⁸ The Bureau stated that it believed a seven-year period between the Rule’s effective date and the Temporary GSE QM loan definition’s sunset date would “provide an adequate period for economic, market, and regulatory conditions to stabilize” and “a reasonable transition period to the general qualified mortgage definition.”⁴⁹ The Bureau believed that the Temporary GSE QM loan definition would benefit consumers by preserving access to credit while the mortgage industry adjusted to the ATR/QM Rule.⁵⁰ The Bureau also explained that it structured the Temporary GSE QM loan definition to cover loans eligible to be purchased or guaranteed by either of the GSEs—regardless of whether the loans are actually purchased or guaranteed—to leave room for non-GSE private investors to return to the market and secure the same legal protections as the GSEs.⁵¹ The Bureau believed that, as the market recovered, the GSEs and the Federal agencies would be able to reduce their market presence, the percentage of Temporary GSE QM loans would decrease, and the market would shift toward General QM loans and non-QM loans above a 43 percent DTI ratio.⁵² The Bureau’s view was that a shift towards non-QM loans could be supported by the non-GSE private market—*i.e.*, by institutions holding such loans in portfolio, selling them in whole, or securitizing them in a rejuvenated private-label securities (PLS) market. The Bureau noted that, pursuant to its statutory obligations under the Dodd-Frank Act, it would assess the impact of the

⁴⁸ See 12 CFR 1026.43(e)(4)(ii)(A)(I) and (e)(4)(iii)(B).

⁴⁹ 78 FR 6408, 6534 (Jan. 30, 2013).

⁵⁰ *Id.* at 6536.

⁵¹ *Id.* at 6534.

⁵² *Id.*

ATR/QM Rule five years after the Rule's effective date, and the assessment would provide an opportunity to analyze the Temporary GSE QM loan definition.⁵³

B. The Current State of the Mortgage Market

The mortgage market has evolved differently than the Bureau predicted when it issued the January 2013 Final Rule. As explained below, and contrary to the Bureau's expectations, the market has not shifted away from Temporary GSE QM originations and the private market⁵⁴ remains small. As noted in the Assessment Report, Temporary GSE QM originations continue to represent "a large and persistent" share of originations in the conforming segment of the mortgage market, and a robust and sizable market to support non-QM lending has not emerged.⁵⁵

The GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the Assessment found a small increase in that share since the Rule's effective date, reaching 71 percent in 2017.⁵⁶ The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.⁵⁷

The continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time it issued the January 2013 Final Rule.⁵⁸ The Assessment Report discussed several possible reasons for the continued prevalence of Temporary GSE QM loan

⁵³ *Id.*

⁵⁴ Consistent with the Assessment Report, references to the private market herein include loans securitized by PLS and loans financed by portfolio lending by commercial banks, credit unions, savings banks, savings associations, mortgage banks, life insurance companies, finance companies, their affiliate institutions, and other private purchasers. See Assessment Report, *supra* note 22, at 74.

⁵⁵ *Id.* at 198.

⁵⁶ *Id.* at 191.

⁵⁷ *Id.* at 192.

⁵⁸ *Id.* at 13, 190, 238.

originations. The Assessment Report first highlighted commenters' concerns with the perceived lack of clarity in appendix Q and found that such concerns "may have contributed to investors'—and at least derivatively, creditors'—preference" for Temporary GSE QM loans instead of originating loans under the General QM loan definition.⁵⁹ In addition, the Bureau has not revised appendix Q since 2013, while other standards for calculating and verifying debt and income have been updated more frequently.⁶⁰ ANPR commenters also expressed concern with appendix Q and stated that the Temporary GSE QM loan definition has benefited creditors and consumers by enabling creditors to originate QMs without having to use appendix Q.

The Assessment Report noted that a second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate demand for mortgages above the General QM loan definition's DTI limit of 43 percent as the DTI ratio distribution in the market shifted upward.⁶¹ According to the Assessment Report, in the years since the ATR/QM Rule took effect, house prices have increased and consumers hold more mortgage and other debt (including student loan debt), all of which have caused the DTI ratio distribution to shift upward.⁶² The Assessment Report noted that the share of GSE home purchase loans with DTI ratios above 43 percent has increased since the ATR/QM Rule took effect in 2014.⁶³ The available data suggest that such high-DTI lending has declined in the non-GSE market relative to the GSE market.⁶⁴ The non-GSE market has constricted even with respect to highly qualified

⁵⁹ *Id.* at 193.

⁶⁰ *Id.* at 193-94.

⁶¹ *Id.* at 194.

⁶² *Id.*

⁶³ *Id.* at 194-95.

⁶⁴ *Id.* at 119-20.

consumers; those with higher incomes and higher credit scores are representing a greater share of denials.⁶⁵

The Assessment Report found that a third possible reason for the persistence of Temporary GSE QM loans is the structure of the secondary market.⁶⁶ If creditors adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.⁶⁷ In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.⁶⁸ There were less than \$20 billion in new origination PLS issuances in 2017, compared with \$1 trillion in 2005,⁶⁹ and only 21 percent of new origination PLS issuances in 2017 were non-QM issuances.⁷⁰ To the extent that private securitizations have occurred since the ATR/QM Rule took effect in 2014, the majority of new origination PLS issuances have consisted of prime jumbo loans made to consumers with strong credit characteristics, and these securities have a low share of non-QM loans.⁷¹ The Assessment Report notes that the Temporary GSE QM loan definition may itself be inhibiting the growth of the non-QM market.⁷² However, the Assessment Report also notes that it is possible that this market might not exist even with a narrower Temporary GSE QM loan definition, if consumers were unwilling to pay the premium charged to cover the potential litigation risk associated with non-

⁶⁵ *Id.* at 153.

⁶⁶ *Id.* at 196.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 197.

⁷¹ *Id.* at 196.

⁷² *Id.* at 205.

QMs, which do not have presumption of compliance with the ATR/QM Rule, or if creditors were unwilling or lack the funding to make the loans.⁷³

The Bureau expects that each of these features of the mortgage market that concentrate lending within the Temporary GSE QM loan definition will largely persist through the current January 10, 2021 sunset date.

C. Potential Market Impact of the Temporary GSE QM Loan Definition's Expiration

The Bureau anticipates that there are two main types of conventional loans that would be affected by the expiration of the Temporary GSE QM loan definition: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. These loans are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This proposal refers to these loans as potentially displaced loans.

High-DTI GSE Loans. The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.⁷⁴ In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This proposal refers to these loans as High-DTI GSE loans. Based on data from the National Mortgage Database (NMDB), the Bureau estimated that there were approximately 6.01 million

⁷³ *Id.*

⁷⁴ 84 FR 37155, 37158-59 (July 31, 2019).

closed-end first-lien residential mortgage originations in the United States in 2018.⁷⁵ Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.⁷⁶ Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.⁷⁷ Thus, the Bureau estimated that, as a result of the General QM loan definition’s 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.⁷⁸ This estimate does not include Temporary GSE QM loans that were eligible for purchase by either of the GSEs but were not sold to the GSEs.

Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible.

In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE underwriting guides would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.⁷⁹ These loans would also likely be affected when the Temporary GSE QM loan definition expires. The Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The

⁷⁵ *Id.*

⁷⁶ *Id.* at 37159.

⁷⁷ *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

⁷⁸ *Id.*

⁷⁹ *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.⁸⁰ As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates that most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q verification requirements became effective in 2014.⁸¹ Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.⁸² Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (*e.g.*, self-

⁸⁰ For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment, underwriting for self-employed borrowers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 22, at 200.

⁸¹ *Id.* at 107 ("For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.").

⁸² *Id.* at 118 ("The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High-DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points.").

employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans.

Additional Effects on Loans Not Displaced. While the most significant market effects under the baseline are displaced loans, loans that continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, all loans with DTI ratios at or below 43 percent that are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q’s ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.⁸³

In response to the ANPR, the Bureau received additional estimates regarding the number of potentially displaced loans. Two comments cited data from a private provider of mortgage market data indicating that 16 percent of mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. One of those comments also stated that a mortgage banker with \$4.5 billion in mortgage loan volume estimated that 25 percent of their mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. This comment also stated that a credit union with \$68 million in mortgage loan volume estimated 17 percent of their mortgages originated in 2018 were considered QMs solely

⁸³ See part V.B. for additional discussion of concerns raised about appendix Q.

due to the Temporary GSE QM loan definition. A comment from a creditor with a mortgage loan volume of \$630 million stated that 20 percent of the commenter's mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. These estimates are generally in line with the Bureau's estimates.

Focusing on High-DTI GSE loans, the Bureau expects that these loans will continue to comprise a significant proportion of mortgage originations through January 10, 2021, when the Temporary GSE QM loan definition is currently scheduled to expire.⁸⁴ The ANPR identified several ways that the market for loans that would have been High-DTI GSE loans may respond to the expiration of the Temporary GSE QM loan definition.⁸⁵ In doing so, the Bureau made assumptions about the future behavior of certain mortgage market participants: (1) that there is no change to the GSEs' current policy that does not allow purchase of non-QM loans; and (2) that creditors' preference for making Temporary GSE QM loans, and investors' preference for purchasing such loans, is driven in part by the safe harbor provided to such loans and that these preferences would continue at least for some creditors and investors.⁸⁶

Given these assumptions, the Bureau expects that many consumers who would have obtained High-DTI GSE loans would instead obtain FHA-insured loans because FHA currently insures loans with DTI ratios up to 57 percent.⁸⁷ The number of loans that move to FHA would depend on FHA's willingness and ability to insure such loans, on whether FHA continues to treat

⁸⁴ 84 FR 37155, 37159 (July 31, 2019).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* In fiscal year 2019, approximately 57 percent of FHA-insured purchase mortgages had a DTI ratio above 43 percent. U.S. Dep't of Hous. & Urban Dev., *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2019*, at 33 (Nov. 14, 2018), <https://www.hud.gov/sites/dfiles/Housing/documents/2019FHAAnnualReportMMIFund.pdf>.

all loans that it insures as QMs under its own QM rule, and on how many High-DTI GSE loans exceed FHA's loan-amount limit.⁸⁸ For example, the Bureau estimates that, in 2018, 11 percent of High-DTI GSE loans exceeded FHA's loan-amount limit.⁸⁹ The Bureau considers this an outer limit on the share of High-DTI GSE loans that could move to FHA.⁹⁰ The Bureau expects that loans that are originated as FHA loans instead of under the Temporary GSE QM loan definition would generally cost materially more for many consumers.⁹¹ The Bureau expects that some consumers offered FHA loans may choose not to take out a mortgage because of these higher costs.

It is also possible that some consumers who would have sought High-DTI GSE loans would be able to obtain loans in the private market.⁹² The ANPR noted that the number of loans absorbed by the private market would likely depend, in part, on whether actors in the private market are willing to assume the legal and credit risk associated with funding High-DTI GSE loans as non-QM loans or small-creditor portfolio QM loans⁹³ and, if so, whether actors in the

⁸⁸ 84 FR 37155, 37159 (July 31, 2019).

⁸⁹ *Id.* In 2018, FHA's county-level maximum loan limits ranged from \$271,050 to \$721,050. See U.S. Dep't of Hous. & Urban Dev., *FHA Mortgage Limits*, <https://entp.hud.gov/idapp/html/hicostlook.cfm> (last visited June 12, 2020).

⁹⁰ 84 FR 37155, 37159 (July 31, 2019).

⁹¹ Interest rates and insurance premiums on FHA loans generally feature less risk-based pricing than conventional loans, charging more similar rates and premiums to all consumers. As a result, they are likely to cost more than conventional loans for consumers with stronger credit scores and larger down payments. Consistent with this pricing differential, consumers with higher credit scores and larger down payments chose FHA loans relatively rarely in 2018 HMDA data on mortgage originations. See Bureau of Consumer Fin. Prot., *Introducing New and Revised Data Points in HMDA* (Aug. 2019), https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.

⁹² 84 FR 37155, 37159 (July 31, 2019).

⁹³ See 12 CFR 1026.43(e)(5) (extending QM status to certain portfolio loans originated by certain small creditors). In addition, section 101 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, sec. 101, 132 Stat. 1296, 1297 (2018), amended TILA to add a safe harbor for small-creditor portfolio loans. See 15 U.S.C. 1639c(b)(2)(F).

private market would offer more competitive pricing or terms.⁹⁴ For example, the Bureau estimates that 55 percent of High-DTI GSE loans in 2018 had credit scores at or above 680 and loan-to-value (LTV) ratios at or below 80 percent—credit characteristics traditionally considered attractive to actors in the private market.⁹⁵ The ANPR also noted that there are certain built-in costs to FHA loans—namely, mortgage insurance premiums—which could be a basis for competition, and that depository institutions in recent years have shied away from originating and servicing FHA loans due to the obligations and risks associated with such loans.⁹⁶

However, the Assessment Report found that a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted. Therefore, there is limited capacity in the non-QM market to provide access to credit after the expiration of the Temporary GSE QM loan definition.⁹⁷ As described above, the non-QM market has been further reduced by the recent economic disruptions associated with the COVID-19 pandemic, with most mortgage credit now available in the QM lending space. The Bureau acknowledges that the slow development of the non-QM market, and the recent economic disruptions that may significantly hinder its development in the near term, may further reduce access to credit outside the QM space.

Finally, the ANPR noted that some consumers who would have sought High-DTI GSE loans may adapt to changing options and make different choices, such as adjusting their

⁹⁴ 84 FR 37155, 37159 (July 31, 2019).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Assessment Report, *supra* note 22 at 198.

borrowing to result in a lower DTI ratio.⁹⁸ However, some consumers who would have sought High-DTI GSE loans may not obtain loans at all.⁹⁹

D. Why the Bureau Is Proposing to Extend the Temporary GSE QM Loan Definition

The Bureau anticipates that if the Temporary GSE QM loan definition expires as scheduled and there are no changes to the General QM loan definition prior to expiration, many High-DTI GSE loans and loans without appendix Q-required documentation that are otherwise GSE-eligible would not be made and many would cost consumers materially more.¹⁰⁰ In a separate proposal issued simultaneously with this proposal, the Bureau is proposing to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. Under the proposal, a loan would meet the General QM loan definition only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set.¹⁰¹ The proposal would also provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. The Bureau expects that the proposed amendments would, among other things, allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires.

The Bureau is concerned about the likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM

⁹⁸ 84 FR 37155, 37159 (July 31, 2019).

⁹⁹ *Id.*

¹⁰⁰ *See supra* part V.C.

¹⁰¹ The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

loan definition take effect. While the Bureau can estimate the outer limit of the share of High-DTI GSE loans that could be originated by the FHA, the Bureau cannot estimate with precision the extent to which loans would be absorbed by the FHA, or the characteristics of the particular loans that might be so absorbed.¹⁰² Similarly, while the Bureau also anticipates that the private market may absorb additional loans that would have been High-DTI GSE loans, the Bureau is uncertain as to the private market's capacity to absorb these loans in the short term—as a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted, and as the non-QM market has been further reduced by the current economic disruptions associated with the COVID-19 pandemic. And, as noted, the Bureau lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the General QM loan definition due to appendix Q-related issues and are not High-DTI GSE loans. Despite these uncertainties, it is likely that many consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the amended General QM loan definition, as separately proposed by the Bureau—would not be able to obtain loans at all if the Temporary GSE QM loan definition expires and final amendments to the General QM loan definition have not gone into effect.¹⁰³ Further, for loans absorbed by the FHA and the private market in the absence of the Temporary GSE QM loan definition, there is significant risk that some consumers would pay more for these loans, although any pricing effects would depend on

¹⁰² Assuming they are still originated, potentially displaced loans made with high LTVs or to consumers with low credit scores are the least likely to be absorbed by the private market, and thus most likely to be absorbed by the FHA. The exact characteristics of loans likely to be absorbed by the FHA would depend on the relative pricing and underwriting requirements of FHA and private market alternatives.

¹⁰³ See *supra* part V.C, noting that some consumers who would have sought High-DTI GSE loans may make different choices, such as by adjusting their borrowing to result in a lower DTI ratio.

the characteristics of the particular loans that would be originated as FHA loans or in the private market.¹⁰⁴

To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM loan definition take effect, the Bureau proposes to extend the Temporary GSE QM loan definition until the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first. The Bureau proposes this extension to ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments take effect.¹⁰⁵

The Bureau stated in the January 2013 Final Rule that, for a limited period of time and while the GSEs are under conservatorship of the FHFA, it believed that GSE-eligible loans are originated with appropriate consideration of ability to repay.¹⁰⁶ As discussed in the ANPR and below, the Bureau is concerned about presuming indefinitely that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer's ability to repay. However, the Bureau expects that, under current conditions, it may be appropriate nevertheless to extend that presumption for a short period until the effective date of Bureau amendments to the General QM loan definition, in light of concerns about effects on

¹⁰⁴ The Assessment Report noted that, while there did not appear to be a marked change in the relative price of non-QM High-DTI loans immediately following the implementation of the ATR/QM Rule, other research has found a 25 basis point premium for non-QM High-DTI loans in more recent years. Assessment Report, *supra* note 22, at 121-22.

¹⁰⁵ The Bureau expects to finalize a rule amending the General QM loan definition, at which point the Temporary GSE QM loan definition would expire under this proposed rule. However, the Bureau notes that in the unlikely event that such a rule is not finalized and the current General QM loan definition remains in place, the Bureau would revisit the Temporary GSE QM loan definition and take appropriate action. As noted above, the Bureau does not intend to maintain indefinitely a presumption that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer's ability to repay.

¹⁰⁶ 78 FR 6408, 6534 (Jan. 30, 2013).

the availability and cost of credit if the Temporary GSE QM loan definition expires before a rule revising the General QM loan definition takes effect.

Under the current rule the Temporary GSE QM loan definition would expire upon the date the GSEs exit conservatorship, even if that occurs prior to January 10, 2021. The Bureau is not proposing any amendments to this provision. If either of the GSEs ceases to operate under FHFA conservatorship prior to the finalization of the Bureau's proposed amendments to the General QM loan definition, the Temporary GSE QM loan definition at § 1026.43(e)(4)(ii)(A) would no longer be available. The Bureau assumes that the conservatorship will remain in place until the conclusion of the rulemaking concerning the General QM loan definition; in the event final amendments to that definition are not in effect at the time the conservatorship of one or both of the GSEs is terminated, the Bureau will evaluate at that point what, if any, steps to take in response to such a termination of conservatorship. Comments on § 1026.43(e)(4)(ii)(A) are outside the scope of this rulemaking and will not be considered.

The Bureau's actions in proposing to extend the Temporary GSE QM loan definition and, separately, to amend the General QM loan definition are informed by the publication in January 2019 of the Assessment Report, which it prepared as required by section 1022(d) of the Dodd-Frank Act. The Assessment Report provides information to allow the Bureau to analyze the impact and status of the ATR/QM Rule.

The Bureau does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021, particularly given that, as its separate proposal states, the Bureau proposes a six-month interval between *Federal Register* publication of a final rule and the rule's effective date.

VI. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(e) Qualified Mortgages

43(e)(4) Qualified Mortgage Defined – Special Rules

43(e)(4)(iii) Sunset of Special Rules

43(e)(4)(iii)(B)

Section 1026.43(e)(4)(iii)(B) provides that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before January 10, 2021.¹⁰⁷ The Bureau proposes to revise § 1026.43(e)(4)(iii)(B) to state that the definition is available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2). Revised § 1026.43(e)(4)(iii)(B) would also state that the Bureau will amend § 1026.43(e)(4)(iii)(B) as of that effective date to reflect the new status.¹⁰⁸

Comment 43(e)(4)-3 clarifies the relationship between § 1026.43(e)(4)(iii)(B) and (ii)(A). The comment explains that the Temporary GSE QM loan definition applies only to loans consummated on or before January 10, 2021, regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the FHFA. The comment also explains that, accordingly, the Temporary GSE QM loan definition is available only for covered transactions consummated

¹⁰⁷ Section 1026.43(e)(4)(iii)(B) also applies to the other temporary QM loan definitions in § 1026.43(e)(4). However, as noted above in part II, these other temporary QM loan definitions have expired because the relevant Federal agencies have issued their own QM rules. *See, e.g.*, 24 CFR 203.19 (HUD rule).

¹⁰⁸ The Bureau is not proposing changes to § 1026.43(e)(4)(ii)(A), which provides that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the FHFA pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*

on or before the earlier of either (i) the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the FHFA or (ii) January 10, 2021. The Bureau proposes to change each of the two references to January 10, 2021 in this comment to conform with the proposed change to § 1026.43(e)(4)(iii)(B). The Bureau also proposes to revise this comment to note that the Bureau will also amend this comment as of the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2) to reflect the new status.

The Bureau considers that, compared with the alternatives, the proposal better ensures the availability of responsible, affordable mortgage credit to consumers and better addresses the risk of disruption as the market transitions away from the Temporary GSE QM loan definition. The Bureau seeks comment on whether a different sunset date for the Temporary GSE QM loan definition would better ensure the availability of responsible, affordable mortgage credit to consumers and better address the risk of disruption as the market transitions away from the Temporary GSE QM loan definition.¹⁰⁹

¹⁰⁹ The Bureau notes that the proposed extension to the Temporary GSE QM loan definition's sunset date does not apply to the temporary points-and-fees cure provision in § 1026.43(e)(3)(iii), which is also set to expire on January 10, 2021. Unlike the Temporary GSE QM loan definition, the Bureau does not expect allowing the temporary points-and-fees cure provision to expire on this date would disrupt the availability of responsible, affordable mortgage credit to consumers. *See* Assessment Report, *supra* note 22, at 12 (noting that applications for which the points-and-fees limit will be exceeded are sufficiently rare that creditors handle them on a case-by-case basis; that, specifically, lenders typically waive certain fees, with or without a compensating increase in the interest rate, to avoid exceeding the cap; and that creditors rarely deny an application to avoid exceeding the QM points-and-fees cap). Further, unlike the Temporary GSE QM loan definition, the Bureau is not currently planning any amendments to the points-and-fees provisions, so there is no need for the Bureau to extend the temporary provision while the Bureau implements such amendments. Comments on the expiration date for the temporary points-and-fees cure provision at § 1026.43(e)(3)(iii) are outside the scope of this rulemaking.

One alternative to the proposal would be to remove § 1026.43(e)(4)(iii)(B), as well as the language in § 1026.43(e)(4)(ii)(A)(1) referring to conservatorship, from Regulation Z.¹¹⁰ This would make the Temporary GSE QM loan definition permanent. The Bureau is not proposing this alternative because it is concerned about presuming indefinitely that loans eligible to be purchased or guaranteed by either of the GSEs—whether or not the GSEs are under conservatorship—have been originated with appropriate consideration of consumers’ ability to repay.¹¹¹ In addition, the Bureau is concerned that making the Temporary GSE QM loan definition permanent could stifle innovation and the development of competitive private-sector approaches to underwriting. The Bureau is also concerned that, as long as the Temporary GSE QM loan definition continues in effect, the non-GSE private market is less likely to rebound and that the existence of the Temporary GSE QM loan definition may be contributing to the continuing limited non-GSE private market. For these reasons, making the Temporary GSE QM loan definition permanent appears to be inconsistent with the purposes of TILA’s ATR provision and with the Bureau’s mandate.

A second alternative would be to remove § 1026.43(e)(4)(iii)(B) from Regulation Z without removing the language in § 1026.43(e)(4)(ii)(A)(1) referring to conservatorship. This would keep the Temporary GSE QM loan definition in place until the end of conservatorship. The Bureau is not proposing this alternative because the Bureau expects that it will be able to issue final amendments to the General QM loan definition, and that those amendments would

¹¹⁰ Under this alternative, § 1026.43(e)(4)(ii)(A) would be revised to read: “To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.”

¹¹¹ For example, the Bureau’s Assessment Report noted that one GSE loosened its underwriting standards in ways that proved unsustainable during the time since the January 2013 Final Rule was issued. Assessment Report, *supra* note 22, at 194-95.

take effect, prior to the termination of conservatorship. Due to its concerns described in the paragraph above about negative effects of the Temporary GSE QM loan definition, the Bureau does not want to maintain the Temporary GSE QM loan definition any longer than necessary to amend the General QM loan definition and to ensure a smooth and orderly transition from the Temporary GSE QM loan definition to the revised General QM loan definition.

A third alternative to the proposal would be to extend the sunset date in § 1026.43(e)(4)(iii)(B) to a date certain. The Bureau is not proposing to extend the sunset date to a date certain because it is concerned that proposing too short an extension may not provide the Bureau with adequate time to consider, propose, and promulgate amendments to the General QM loan definition and creditors with enough time to bring their operations into compliance with any amendments adopted by the Bureau. At the same time, the Bureau is concerned that proposing too long an extension would have the same type of negative effects as the Bureau describes in the paragraph above regarding making the Temporary GSE QM loan definition permanent, without any offsetting benefits because a longer extension is not needed to provide the Bureau with adequate time to consider, propose, and promulgate amendments to the General QM loan definition.

As with the January 2013 Final Rule, the Bureau issues this proposal pursuant to its authority under TILA sections 129C(b)(3)(B)(i) and 105(a) and Dodd-Frank Act section 1022(b)(1). For the reasons described above in part V.D, the Bureau tentatively determines that the proposed extension of the Temporary GSE QM loan definition's sunset date is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C, as well as necessary and appropriate to effectuate the purposes of TILA section 129C—including the purpose of assuring that

consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive. For these same reasons, this proposed extension is necessary to effectuate the purposes of TILA, which include, among other things, the above-described purpose of TILA section 129C.

The Bureau requests comment on the proposed revisions to § 1026.43(e)(4)(iii)(B) and comment 43(e)(4)-3 as well as its rationale for the proposed revisions.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

As discussed above, this proposal would delay the scheduled expiration of the Temporary GSE QM loan definition from January 10, 2021 to the effective date of a final rule issued by the Bureau amending the General QM loan definition. In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

1. Data and evidence

The discussion in this impact analyses relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA¹¹² and NMDB¹¹³ data, as well as data obtained from industry, other regulatory agencies, and other publicly available sources. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the proposed rule, including the extent to which DTI ratios are probative of a consumer's ability to repay, the effect of rebuttable presumption status relative to safe-harbor status on access to credit, and the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, and performance of mortgage loans originated in recent years. However, they do not provide information on creditor costs. As a result, analyses of any impacts of the proposal on creditor costs, particularly realized costs of complying with underwriting criteria or potential costs from legal liability are based on more qualitative information. Similarly, estimates of any

¹¹² HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. See Bureau of Consumer Fin. Prot., *Mortgage Data (HMDA)*, <https://www.consumerfinance.gov/data-research/hmda/>.

¹¹³ The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a 5 percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data. See Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection*, at 55-56 (Sept. 2018), https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf. Differences in total market size estimates between NMDB data and Home Mortgage Disclosure Act (HMDA) data are attributable to differences in coverage and data construction methodology.

changes in burden on consumers resulting from increased or decreased documentation requirements are based on qualitative information.

The Bureau seeks comment on its analysis, and additional information or data which could inform quantitative estimates of the number of borrowers whose documentation cannot satisfy appendix Q, or the costs to borrowers or covered persons of complying with appendix Q documentation requirements. The Bureau also seeks comment or additional information which could inform quantitative estimates of the availability, underwriting, and pricing of non-QM alternatives to loans made under the Temporary GSE QM loan definition.

2. Description of the baseline

The Bureau considers the benefits, costs, and impacts of the proposal against the baseline in which the Bureau takes no action and the Temporary GSE QM loan definition expires on January 10, 2021 or when the GSEs exit conservatorship, whichever occurs first. Under the proposal, the Temporary GSE QM loan definition would expire when the GSEs exit conservatorship or on the effective date of a final rule issued by the Bureau amending the General QM loan definition, whichever occurs first. As a result, the proposal's direct market impacts would occur only if the GSEs remain in conservatorship beyond January 10, 2021. The impact analyses assume the GSEs will remain in conservatorship for the relevant period of time.

Under the baseline, when the Temporary GSE QM loan definition expires, conventional loans could only receive QM status under the Bureau's rules by underwriting according to the General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, or the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act. The General QM loan definition, which would be the only type of QM available to larger creditors following the expiration of the Temporary

GSE QM loan definition, requires that consumers' DTI ratio not exceed 43 percent and requires creditors to determine debt and income in accordance with the standards in appendix Q of Regulation Z.

As stated above in part V.C, the Bureau anticipates that, under the baseline in which the Temporary GSE QM loan definition expires, there are two main types of conventional loans that would be affected: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. Leaving the current fixed sunset date in place would affect these loans because they are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This section 1022 analysis refers to these loans as potentially displaced loans.

High-DTI GSE Loans. The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.¹¹⁴ In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This proposal refers to these loans as High-DTI GSE loans. Based on NMDB data, the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.¹¹⁵ Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—

¹¹⁴ 84 FR 37155, 37158-59 (July 31, 2019).

¹¹⁵ *Id.*

of those loans.¹¹⁶ Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.¹¹⁷ Thus, the Bureau estimated that, as a result of the General QM loan definition’s 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.¹¹⁸ This estimate does not include Temporary GSE QM loans that were eligible for purchase by the GSEs but were not sold to the GSEs.

Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible.

In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE underwriting guides would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.¹¹⁹ These loans would also likely be affected when the provision expires. The Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.¹²⁰ As a result, these

¹¹⁶ *Id.* at 37159.

¹¹⁷ *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

¹²⁰ For example, in qualitative responses to the Bureau’s Lender Survey conducted as part of the Assessment, underwriting for self-employed borrowers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the

consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q documentation requirements became effective in 2014.¹²¹ Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.¹²² Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (*e.g.*, self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans.

Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 22, at 200.

¹²¹ Assessment Report, *supra* note 22, at 107 ("For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.").

¹²² *Id.* at 118 ("The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points....").

Additional Effects on Loans Not Displaced. While the most significant market effects under the baseline are displaced loans, loans which continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, all loans with DTI ratios at or below 43 percent which are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q’s ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.¹²³

B. Potential Benefits and Costs to Covered Persons and Consumers

1. Benefits to consumers

The primary benefit to consumers of the proposal is the continued availability of High-DTI GSE loans during the period of the extension. Given the large number of consumers who obtain such loans rather than available alternatives, including loans from the private non-GSE market and FHA loans, these GSE loans may be preferred due to their pricing, underwriting requirements, or other features.

Under the baseline, a sizeable share of potentially displaced High-DTI GSE loans may instead be originated as FHA loans. Thus, under the proposal, any price advantage of GSE loans over FHA loans would be a realized benefit to consumers. Based on the Bureau’s analysis of

¹²³ See part V.B. for additional discussion of concerns raised about appendix Q.

2018 HMDA data, FHA loans comparable to the loans received by High-DTI GSE borrowers, based on loan purpose, credit score, and combined LTV ratio, on average have \$3,000 to \$5,000 higher upfront total loan costs. APRs provide an alternative, annualized measure of costs over the life of a loan. FHA borrowers typically pay different APRs, which can be higher or lower than APRs for GSE loans depending on a borrower's credit score and LTV. Borrowers with credit scores at or above 720 pay an APR 30 to 60 basis points higher than borrowers of comparable GSE loans, leading to higher monthly payments over the life of the loan. However, FHA borrowers with credit scores below 680 and combined LTVs exceeding 85 pay an APR 20 to 40 basis points lower than borrowers of comparable GSE loans, leading to lower monthly payments over the life of the loan.¹²⁴ For a loan size of \$250,000, these APR differences amount to \$2,800 to \$5,600 in additional total monthly payments over the first five years of mortgage payments for borrowers with credit scores above 720, and \$1,900 to \$3,800 in reduced total monthly payments over five years for borrowers with credit scores below 680 and LTVs exceeding 85.¹²⁵ Thus all FHA borrowers are likely to pay higher costs at origination, while some pay higher monthly mortgage payments and others pay lower monthly mortgage payments. Assuming for comparison that all 957,000 High-DTI GSE loans would be made as FHA loans in the absence of the proposal, the average of the upfront pricing estimates implies total savings for consumers of roughly \$4 billion per year on upfront costs while the Temporary GSE QM loan

¹²⁴ The Bureau expects consumers could continue to obtain FHA loans where such loans were cheaper or preferred for other reasons.

¹²⁵ Based on NMDB data, the Bureau estimates that the average loan amount among High-DTI GSE borrowers in 2018 was \$250,000. While the time to repayment for mortgages varies with economic conditions, the Bureau estimates that half of mortgages are typically closed or paid off five to seven years into repayment. Payment comparisons based on typical 2018 HMDA APRs for GSE loans, five percent for borrowers with credit scores over 720, and six percent for borrowers with credit scores below 680 and LTVs exceeding 85.

definition remains in effect.¹²⁶ The total savings or costs over the life of the loan implied by APR differences would vary substantially across borrowers depending on credit scores, LTVs, and length of time holding the mortgage. While this comparison assumed all potentially displaced loans would be made as FHA loans, higher costs (either upfront or in monthly payments) are likely to prevent many borrowers from obtaining loans at all.

In the absence of the proposed amendment to the regulation, some of these potentially displaced consumers, particularly those with higher credit scores and the resources to make larger down payments, likely would be able to obtain credit in the non-GSE private market at a cost comparable or slightly higher than the costs for GSE loans, but below the cost of an FHA loan. As a result, the above cost comparisons between GSE and FHA loans provide an estimated upper bound on pricing benefits to consumers of the proposal. However, under the baseline, some potentially displaced consumers may not obtain loans, and thus would experience benefits of credit access under the proposal.¹²⁷ As discussed above, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of high-DTI home purchase loans that were not Temporary GSE QM loans.¹²⁸ The Bureau requests information or data that would inform quantitative estimates of the number of consumers who may not obtain loans, and the costs to such consumers.

¹²⁶ This approximation assumes \$4,000 in savings from total loan costs for all 957,000 consumers. Actual expected savings would vary substantially based on loan and credit characteristics, consumer choices, and market conditions.

¹²⁷ In particular, the Assessment concluded that some borrowers with strong credit characteristics may no longer be able to obtain conventional QM loans, despite likely possessing the ability to repay such loans. Assessment Report at 150 (“Together, these findings suggest that the observed decrease in access to credit in this segment was likely driven by lenders’ desire to avoid the risk of litigation by consumers asserting a violation of the ATR requirement or other risks associated with that requirement, rather than by rejections of borrowers who were unlikely to repay the loan.”).

¹²⁸ *See id.* at 10-11, 117, 131-47.

The proposal would also benefit those consumers with incomes difficult to document using appendix Q to obtain General QM status, as the Temporary GSE QM loan definition continues to allow documentation of income and debt through GSE standards. The greater flexibility of GSE documentation standards likely reduces effort and costs for these consumers under the proposal, and in the most difficult cases in which borrowers' documentation cannot satisfy appendix Q, the proposal would allow consumers to receive Temporary GSE QM loans rather than potential FHA or non-QM alternatives. These consumers would likely benefit from cost savings under the proposal, similar to those for High-DTI consumers discussed above.

2. Benefits to covered persons

The proposal's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating High-DTI conventional QM loans. Under the baseline, creditors would be unable to originate such loans under the Temporary GSE QM loan definition after January 10, 2021 and would instead have to originate loans with comparable DTI ratios as FHA, Small Creditor QM, or non-QM loans, or originate at lower DTI ratios as conventional General QM loans. Creditors' current preference for originating large numbers of High-DTI Temporary GSE QM loans likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans—including Temporary GSE QM loans—are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the proposal conveys benefits to mortgage creditors originating Temporary GSE QM loans on each of these dimensions.

In addition, for those lower-DTI GSE loans which could satisfy General QM requirements, creditors may realize cost savings from continuing to underwrite loans using only the more flexible GSE documentation standards as compared to the appendix Q underwriting standards required for General QM loans. For GSE consumers unable to provide documentation compatible with appendix Q, the proposal allows such loans to continue receiving QM status, providing comparable benefits to creditors as described for High-DTI GSE loans above.

Finally, those creditors whose business models rely most heavily on originating High-DTI GSE loans would likely see a competitive benefit from the continued ability to originate such loans as Temporary GSE QM loans. This is effectively a transfer in market share to these creditors from those who primarily originate FHA or private non-GSE loans, who likely would have gained market share after the expiration of the Temporary GSE QM loan definition.

3. Costs to consumers

The extension of the Temporary GSE QM loan definition could delay the development of the non-QM market, particularly new mortgage products which may have become available if the Temporary GSE QM loan definition had been allowed to expire. To the extent that some consumers would prefer some of these products to GSE loans due to pricing, documentation flexibility, or other advantages, the delay of their development would be a cost to consumers of the proposal.

In addition, consumers who would have obtained non-QM loans under the baseline but instead obtain QM loans under the proposal forgo the benefit of retaining the ATR causes of action and defenses against foreclosure.

4. Costs to covered persons

The proposal's most sizable costs to covered persons are effectively transfers between lenders for the duration of the extension, reflecting temporarily reduced loan origination volume for lenders who primarily originate FHA or private non-GSE loans and temporarily increased origination volume for lenders who primarily originate GSE loans. Business models vary substantially within market segments, with portfolio lenders and lenders originating non-QM loans most likely to experience a delay in market share gains possible if the Temporary GSE QM loan definition had been allowed to expire, while GSE-focused bank and non-bank lenders are likely to maintain market share that might be lost sooner in the absence of the proposal.

5. Other benefits and costs

In delaying the Temporary GSE QM loan definition's expiration, the proposal would delay any effects of the expiration on the development of the secondary market for private (non-GSE) mortgage loan securities. When the Temporary GSE QM loan definition expires, those loans that do not fit within the General QM loan definition represent a potential new market for private securitizations. Thus, the proposal would reduce the scope of the potential non-QM market for the duration of the extension, likely lowering profits and revenues for participants in the private secondary market. This would effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

Potential Impact on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, as Described in Section 1026

The proposal's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with \$10 billion or less in total assets is similar to the expected impact on larger creditors and on non-depository creditors. As discussed in part VII.B.4 (Costs to Covered Persons), depository creditors originating portfolio loans may

experience a delay in potential market share gains that would occur in the absence of the proposal. In addition, those smaller creditors originating portfolio loans can originate High-DTI Small Creditor QM loans under the rule, and thus may rely less on the Temporary GSE QM loan definition for originating High-DTI loans. If the expiration of the Temporary GSE QM loan definition would confer a competitive advantage to these small creditors in their origination of High-DTI loans, the proposal would delay this outcome.

Conversely, those small creditors that primarily rely on the GSEs as a secondary market outlet because they do not have the capacity to hold numerous loans on portfolio or the infrastructure or scale to securitize loans may continue to benefit from the ability to make High-DTI GSE loans as Temporary GSE QM loans. In the absence of the proposal, these creditors would be limited to originating GSE loans as QMs only with DTI at or below 43 percent under the General QM loan definition. These creditors may also originate FHA, VA, or USDA loans or non-QM loans for private securitizations, likely at a higher cost relative to Temporary GSE QM loans.

Potential Impact on Rural Areas

The proposal's expected impact on rural areas is similar to the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that High-DTI conventional purchase mortgages are comparably likely to be reported as initially sold to the GSEs in rural areas (52.5 percent) as in non-rural areas (52.0 percent).¹²⁹

¹²⁹ These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines. In addition, a higher share of High-DTI conventional purchase non-rural loans (33.3 percent) report being sold to other non-GSE purchasers compared to rural loans (22.3 percent).

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.¹³⁰

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.¹³¹ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.¹³²

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, the Temporary GSE QM loan definition expires, and therefore no creditor—including small entities—would be able to originate QM loans under that definition. Under the proposal,

¹³⁰ 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

¹³¹ 5 U.S.C. 603–605.

¹³² 5 U.S.C. 609.

certain small entities that would otherwise not be able to originate QM loans under that definition would be able to originate such loans with QM status. Thus, the Bureau anticipates that the proposal would only reduce burden on small entities relative to the baseline.

Accordingly, the Director certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),¹³³ Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number 3170-0015. The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170-0015 is the Bureau's OMB control number for Regulation Z.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

¹³³ 44 U.S.C. 3501 *et seq.*

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E – Special Rules for Certain Home Mortgage Transactions

2. Amend § 1026.43 by revising paragraph (e)(4)(iii)(B) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(e) * * *

(4) * * *

(iii) * * *

(B) Unless otherwise expired under paragraph (e)(4)(iii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending paragraph (e)(2) of this section. The Bureau will also amend this paragraph as of that effective date to reflect the new status.

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3. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, revise *43(e)(4) Qualified mortgage defined—special rules* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum standards for transactions secured by a dwelling.

* * * * *

43(e)(4) Qualified mortgage defined—special rules.

1. *Alternative definition.* Subject to the sunset provided under § 1026.43(e)(4)(iii), § 1026.43(e)(4) provides an alternative definition of qualified mortgage to the definition provided in § 1026.43(e)(2). To be a qualified mortgage under § 1026.43(e)(4), the transaction must satisfy the requirements under § 1026.43(e)(2)(i) through (iii), in addition to being one of the types of loans specified in § 1026.43(e)(4)(ii)(A) through (E).

2. *Termination of conservatorship.* Section 1026.43(e)(4)(ii)(A) requires that a covered transaction be eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or

receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617). The special rule under § 1026.43(e)(4)(ii)(A) does not apply if Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) has ceased operating under the conservatorship or receivership of the Federal Housing Finance Agency. For example, if either Fannie Mae or Freddie Mac (or succeeding limited-life regulatory entity) ceases to operate under the conservatorship or receivership of the Federal Housing Finance Agency, § 1026.43(e)(4)(ii)(A) would no longer apply to loans eligible for purchase or guarantee by that entity; however, the special rule would be available for a loan that is eligible for purchase or guarantee by the other entity still operating under conservatorship or receivership.

3. *Timing.* Under § 1026.43(e)(4)(iii), the definition of qualified mortgage under § 1026.43(e)(4) applies only to loans consummated on or before the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2), regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the Federal Housing Finance Agency. Accordingly, § 1026.43(e)(4) is available only for covered transactions consummated on or before the earlier of either:

i. The date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); or

ii. The effective date of a final rule issued by the Bureau amending § 1026.43(e)(2), as provided by § 1026.43(e)(4)(iii)(B). The Bureau will also amend this commentary as of that

effective date to reflect the new status.

4. *Eligible for purchase, guarantee, or insurance except with regard to matters wholly unrelated to ability to repay.* To satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by Fannie Mae or Freddie Mac or insured or guaranteed by one of the Agencies (the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS)). Rather, § 1026.43(e)(4)(ii) requires only that the creditor determine that the loan is eligible (*i.e.*, meets the criteria) for such purchase, guarantee, or insurance at consummation. For example, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) for that loan to be a qualified mortgage; however, the loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), including satisfying any requirements regarding consideration and verification of a consumer's income or assets, credit history, debt-to-income ratio or residual income, and other credit risk factors, but not any requirements regarding matters wholly unrelated to ability to repay. To determine eligibility for purchase, guarantee or insurance, a creditor may rely on a valid underwriting recommendation provided by a GSE automated underwriting system (AUS) or an AUS that relies on an Agency underwriting tool; compliance with the standards in the GSE or Agency written guide in effect at the time; a written agreement between the creditor or a direct sponsor or aggregator of the creditor and a GSE or Agency that permits variation from the standards of the written guides and/or variation from the AUSs, in effect at the time of consummation; or an individual loan waiver granted by the GSE or Agency to the creditor. For creditors relying on the variances of a sponsor or aggregator, a loan that is transferred directly to

or through the sponsor or aggregator at or after consummation complies with § 1026.43(e)(4). In using any of the four methods listed above, the creditor need not satisfy standards that are wholly unrelated to assessing a consumer's ability to repay that the creditor is required to perform.

Matters wholly unrelated to ability to repay are those matters that are wholly unrelated to credit risk or the underwriting of the loan. Such matters include requirements related to the status of the creditor rather than the loan, requirements related to selling, securitizing, or delivering the loan, and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing.

Accordingly, a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, for example, if:

- i. The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor or a sponsor or aggregator of the creditor and Fannie Mae or Freddie Mac in effect at that time that permits variation from the standards of those guides;

- ii. The loan has been granted an individual waiver by a GSE, which will allow purchase or guarantee in spite of variations from the applicable standards; or

- iii. The creditor inputs accurate information into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS that are not

wholly unrelated to ability to repay, the non-satisfaction of which would invalidate that recommendation:

- A. An “Approve/Eligible” recommendation from Desktop Underwriter (DU); or
- B. A risk class of “Accept” and purchase eligibility of “Freddie Mac Eligible” from Loan Prospector (LP).

5. *Repurchase and indemnification demands.* A repurchase or indemnification demand by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands are not related to eligibility criteria at consummation. *See* comment 43(e)(4)-4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria at consummation may be brought to light in the course of dealing over a particular demand, depending on the facts and circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:

- i. Assume eligibility to purchase a loan was based in part on the consumer's employment income of \$50,000 per year. The creditor uses the income figure in obtaining an approve/eligible recommendation from DU. A quality control review, however, later determines that the documentation provided and verified by the creditor to comply with Fannie Mae requirements

did not support the reported income of \$50,000 per year. As a result, Fannie Mae demands that the creditor repurchase the loan. Assume that the quality control review is accurate, and that DU would not have issued an approve/eligible recommendation if it had been provided the accurate income figure. The DU determination at the time of consummation was invalid because it was based on inaccurate information provided by the creditor; therefore, the loan was never a qualified mortgage under § 1026.43(e)(4).

ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted-average coupon, weighted-average maturity, and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. Because the loan still meets Fannie Mae's eligibility requirements, it remains a qualified mortgage based on these facts and circumstances.

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